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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 144 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.

2. To be referred to the Reporter or not? Yes.

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

No.

5. Whether it is to be circulated to the Civil Judge? No.

DIVISIONAL CONTROLLER

Versus

RAMANBHAI D GAMIT

Appearance:

MR YS LAKHANI for Petitioner

MR JOY MATHEW for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 07/07/98

ORAL JUDGEMENT

Rule. Mr. Joy Mathew waives service of notice of Rule for respondent.

2. Gujarat State Road Transport Corporation(GSRTC) has filed the present petition to challenge the order passed by the Labour Court, Surat in Ref.No. 188 of 1998.

2. Ramanlal D. Gamit-the respondent herein was working as a conductor on a bus which was to ply between Shirdi (State of Maharashtra) and Surat on 27.5.1994. When the said bus was approaching the S.T. bus stand, the same was checked and on checking, it was found that the respondent had taken the fare from 3 passengers of Rs. 15/- but had not issued tickets to them. Similarly, it was also found that there was a group of another 4 passengers from whom he had also taken the fares but had not issued tickets. A report about the said incident was made by the checking party to their superiors and thereafter, it was decided to initiate a departmental inquiry against the respondent. A show cause notice was issued to the respondent to show cause as to why he should not be penalised for the misconduct. The respondent replied to the said show cause notice and in the same, he contended that it was a new route for him and he was performing his duties on the said route for the first time. When he was in the process of issuing tickets, his bus was checked and he had not closed his way bill or accounts. There was no intention on his part to mis appropriate any amount. Said explanation given by him was not accepted by the department and it was decided to proceed with the departmental inquiry. The respondent remained absent in the said departmental inquiry and the departmental inquiry was conducted against the respondent ex-parte. In the departmental inquiry it was found that the charges levelled against the respondent were proved and thereafter punishment of dismissal from service was inflicted on the respondent. Therefore, the respondent raised an industrial dispute. On account of raising of the dispute, a Reference being Ref. No. 188 of 1996 was made to the Labour Court, Surat by the concerned authorities. The Labour Court, Surat considered the explanation given by the respondent and found that though the charge of non issuance of tickets was proved, it was not possible to hold that the explanation given by the respondent was false. He also found that the punishment of dismissal from service was not justified. The Labour Court therefore, passed an award on 28.2.97 by which the Labour Court set aside the order of dismissal and

directed the petitioner to reinstate the respondent without any back wages and stoppage of five increments permanently.

3. Against the said award of the Labour Court, the employer has come before this Court.

4. It is vehemently urged by the learned advocate for the petitioner that the offence committed by the respondent was a grave and serious offence and in view of the said grave misconduct the punishment of dismissal passed by the department ought not to have been interfered by the Labour Court.

5. As against this, learned advocate for the respondent submitted that the Labour Court has used the discretion properly in the matter and no interference is called for by the hands of this Court while exercising discretionary powers under Articles 226 and 227 of the Constitution of India.

6. The charge levelled against the present petitioner was of non issuance of tickets to 7 passengers when he had received fare from the said passengers. There is no dispute of the fact that he had received fare from the passengers and he had not also issued tickets when the bus was checked. But it is the claim of the respondent that when the bus was checked, he was in the process of issuing tickets. He has also stated that he was performing his duties on the said route for the first time and as it was a new route for him, a lot of time was spent for issuing tickets. The route was admittedly out of the State of Gujarat. The explanation given by the respondent could not be said to be unreasonable or unbelievable. It could not be said that no prudent man will not accept said explanation given by him. The Labour Court has found favour with the said explanation given by the respondent and therefore, the Labour Court took the mis-conduct in the circumstances as not so serious as to inflict the punishment of dismissal from service. The Labour Court has also taken care to see that the delinquent should not also go away without any punishment for negligence of his duty. Therefore, the Labour Court has stopped five increments permanently and has denied back wages to the delinquent for a period of nearly three years. Therefore, in the above circumstances it could not be said that the discretion used by the Labour Court is either perverse or grossly erroneous so as to interfere with the same by exercising extra ordinary powers under Articles 226 and 227 of the

Constitution of India. I therefore, hold that present petition deserves to be dismissed. In the facts and circumstances of the case the parties are directed to bear their respective costs. Rule discharged.

The petitioner should implement the award passed by the Labour Court, Surat within four weeks from the date of receipt of the writ of this court.

(S.D.Pandit.J)